

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte

Application No. 09/925,585



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on February 23, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

**Amendment**

On November 10, 2005, appellant filed an Amendment, wherein appellant cancelled Claims 2-3, 9-10 and 16-17. It is noted that appellant did not rewrite the dependent claims in independent form. Correction is required.

**Final Rejection**

On January 27, 2006, a Final Rejection was mailed. The Examiner's Answer acknowledged receipt and entry of the Amendment filed November 10, 2005, and introduced a new ground of rejection. The new ground of rejection included previously cancelled claims 2-3,

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9-10 and 16-17, as well as, the claims which depended from the above-identified cancelled claims. The rejection is reproduced below:

Claims 1-21 were rejected under 35 U.S.C. 103(a) as being unpatentable Over Majoor (2002/0029154) in view of Gupta (2002/0184265) further in view of Peters (5,892,098), further in view of Plantec (6,826,540), includes claims that were previously rejected and their dependent claims.

Correction is required.

**Examiner's Answer**

On September 26, 2006, an Examiner's Answer was mailed. The Examiner's Answer includes the same 103(a) rejection, identified above, in the Final Rejection mailed January 27, 2006. Specifically, the Examiner continues to reject claims that were cancelled with the Amendment filed November 10, 2005, and likewise continues to reject claims dependent on those cancelled claims.

Further, it is noted the Examiner introduces a new ground of objection (pg. 2, lines 11-15):

Claims 4, 11 and 17 are objected to because of the following informalities: The claims in the appendix contain minor errors that also existed in the amendment. The Dependent claims 2-3 were cancelled, but claim 4 still depends on claim 2. Likewise 9-10 Cancelled, but 11 depends on 9. And 16-17 cancelled, but 18 depends on 17...

The Examiner should consider taking the opportunity in responding to this Order Returning Undocketed Appeal to address any objection to the claims prior to mailing any corrected or supplemental examiner's answer.

Reply Brief

On February 8, 2007, the Examiner mailed a communication acknowledging receipt of Appellant's Reply Brief, dated November 27, 2006. A review of this communication reveals that The Examiner did not provide proper acknowledgment. The comments made by the Examiner constitutes a Supplemental Examiner's Answer. In accordance with MPEP 1207.05, all supplemental examiner's answers must be approved by a Technology Center (TC) Director or designee. The Communication mailed February 8, 2007, was not signed by the Technology Center Director or designee.

CONCLUSION

Accordingly, it is

**ORDERED** that the application is returned to the examiner to:

- 1) vacate the Examiner's Answer dated September 26, 2006 and vacate the improper Reply Brief Noted dated February 8, 2007,
- 2) submit a new Examiner's answer properly addressing the pending and appealed claims; and;
- 3) for such further action as may be appropriate.

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